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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/491,747	01/27/2000	Brad S. Konia	9403-0F255US0	9009
7590	12/23/2003		EXAMINER	
Brown RaysmanMillerstein Felder & Steiner LLP 1880 Century Park East, Suite 711 Los Angeles,, CA 90067			KARMIS, STEFANOS	
			ART UNIT	PAPER NUMBER
			3624	

DATE MAILED: 12/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/491,747	KONIA, BRAD S.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Stefano Karmis	3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 04 August 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-25 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) Interview Summary (PTO-413) Paper No(s). 17.  
5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_

**DETAILED ACTION**

1. This communication is in response to Applicant's amendment and RCE filed on 04 August 2003.

*Status of Claims*

2. Claims 1, 11, and 23 have been amended in the same amendment. Remaining claims have been left as originally filed and no new claims have been added. Therefore claims 1-25 are under prosecution in this application.

*Response to Applicant's Amendment*

3. Applicant's arguments filed on 04 August 2003 have been fully considered. Claims 1-25 have been rejected under new art and Applicant's request for allowance is respectfully denied. Any arguments with respect to the previous Office Action are now considered moot in view of the new grounds of rejection.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 11-13 and 23-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Fisher et al. (hereinafter Fisher) U.S. Patent 5,835,896.

Regarding independent claims 1 and 11, Fisher discloses a method and system for processing and transmitting electronic auction information comprising receiving bid management data from a first bidder for managing bidding by the bidder in the auction (column 6, lines 31-38); checking for whether a first bid from the first bidder exceeds a second bid from a second bidder in an auction for determining continuing priority for providing an ongoing service for the first and second bidder, wherein the relative priority for the providing service for the first bidder is dependent on whether the value of the first bid exceeds the value of the second bid, and wherein the relative priority for providing the service for the second bidder is dependent on whether the value of the second bid exceeds the value of the first bid (column 10, lines 6-28 and column 11, lines 21-43); according to the bid management data received from the first bidder, automatically incrementing the first bid to a value exceeding the second bid if the first bid does not exceed the second bid, thereby causing the relative priority for providing service for the

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second bidder (column 9, lines 18-35); and a database electrically connected to the processor for storing first and second bids (column 6, lines 39-45 and Figure 4).

Claims 2 and 12, the step of checking and incrementing bids is executed a plurality of times (column 9, lines 18-35).

Claims 3 and 13, the step of checking and incrementing pauses for a period of time between each series of steps (column 9, lines 18-35).

Regarding independent claim 23, Fisher discloses a method and system for processing and transmitting electronic auction information comprising receiving bid management data from a first vendor for managing bidding by the vendor in the auction (column 6, lines 31-38); a processor for checking for whether a first bid from the first vendor is lower than a second bid from a second vendor in an auction for determining continuing priority for providing an ongoing service for the first and second vendor, wherein the relative priority for the providing service for the first vendor is dependent on whether the value of the first bid is lower than the value of the second bid, and wherein the relative priority for providing the service for the second vendor is dependent on whether the value of the second bid is lower than the value of the first bid (column 10, lines 40 thru column 11, line 20); according to the bid management data received from the first vendor, automatically decreasing the first bid to a value lower than the second bid if the first bid does not exceed the second bid, thereby causing the relative priority for providing service for the second bidder (column 12, line 63 thru column 13, line 24); and a

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database electrically connected to the processor for storing first and second bids (column 6, lines 39-45 and Figure 4).

Regarding independent claim 24, Fisher discloses receiving a first and second inventory value representing the quantity of inventory for a first or second merchandise item (Figure 2). Fisher discloses sorting of the products on advertising pages wherein the first product is presented higher on the advertising page than the second if the first quantity value is higher than the second quantity value (column 11, lines 1-20).

Claim 25, listing the first and second products on the electronic advertising page according to the value of a first and second bid wherein the first product is presented higher on the advertising page than the second product if the first bid is higher than the second bid, and wherein the first bid is set higher than the second bid if the first inventory value is higher than the second inventory value (column 10, lines 6-28 and column 11, lines 1-20).

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***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 4-8 and 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher et al. (hereinafter Fisher) U.S. Patent 5,835,896 in view of Davis et al. (hereinafter Davis) U.S. Patent 6,269,361.

Claims 4 and 8, Fisher teaches a method and system for processing and transmitting electronic auction information for purchasing of merchandise. Fisher fails to specify the service customers are bidding on comprises ranking of hypertext links to web pages in search results in an on-line web page search engine. Davis teaches a system and method for ranking of hypertext

links to web pages in search results in an on-line web page search engine (column 5, lines 1-34).

Therefore it would be obvious to someone of ordinary skill in the art, that the auctioning techniques taught by Fisher could be modified to include bidding to rank hypertext links to web pages in search results because it is merely a specific type of item or service being auctioned.

There is sufficient motivation to combine the teachings of Fisher and Davis, both inventors describe systems and methods for performing on-line bidding by a customer for merchandise or a service.

Claims 5 and 15, Davis teaches ranking of a first hypertext link to a first web page for the first bidder is higher than the ranking of a second hypertext link to a second web page for the second bidder if the first bid is higher than the second (column 5, lines 35-52).

Claims 6 and 16, Davis teaches placing bids on a plurality of search terms which may be typed into the search engine by search engine users wherein different ranking is determined for each search term (column 4, lines 10-25).

Claims 7 and 17, Davis teaches ranking of a first hypertext link to a first web page for the first bidder is higher than the ranking of a second hypertext link to a second web page for the second bidder if the first bid is higher than the second for each of the plurality of search terms (column 5, lines 35-52).

Claims 8 and 20, Davis teaches the step of checking and incrementing is executed for a plurality of search engines for a plurality of search terms (column 4, line 10-48).

Claims 18-19, Davis teaches a plurality of servers electrically connected to a network and a plurality of search engines on the plurality of servers (column 7, lines 33-67 and Figure 1).

10. Claims 9-10 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher et al. (hereinafter Fisher) U.S. Patent 5,835,896 in view of Wallman U.S. Patent 6,601,044.

Claims 9-10 and 21-22, Fisher teaches a method and system for processing and transmitting electronic auction information for purchasing of merchandise. Fisher fails to specify the service customers are golf course tee-off times and airline reservations. Wallman teaches a system and method for the trading of commodities including golf course tee-off times and airline reservations (column 19, lines 30-40). Therefore it would be obvious to someone of ordinary skill in the art that the auctioning techniques taught by Fisher could be modified to include tee-off times and airline reservations as taught by Wallman because it is merely a specific type of item or service being auctioned. There is sufficient motivation to combine the teachings of Fisher and Wallman, since both inventors describe systems and methods for performing on-line trading by a customer for merchandise or a service.

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a) Fisher et al., US Patent 6,243,691 Jun. 5, 2001. Method and system for processing and transmitting electronic auction information.
- b) Walker et al., US Patent 6,356,878 Mar. 12, 2002. Conditional purchase offer buyer agency system.
- c) Boarman et al., US Patent 6,609,112 Aug. 19, 2003. System and method for providing proxy-based online dutch auction services.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stefano Karmis whose telephone number is (703) 305-8130. The examiner can normally be reached on M-F: 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (703) 308-1065. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-1113.

Respectfully Submitted  
Stefano Karmis  
December 10, 2003



HANI M. KAZIMI  
PRIMARY EXAMINER